

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 537 of 1997
with
CRIMINAL REVISION APPLICATION No. 175 of 1997
with
CRIMINAL REVISION APPLICATIONS Nos. 137 & 138 of 1998
with
CRIMINAL REVISION APPLICATION No. 286 of 1998
with
CRIMINAL REVISION APPLICATION No. 287 of 1998
with
CRIMINAL REVISION APPLICATION No. 305 of 1998
with
CRIMINAL REVISION APPLICATIONS Nos. 306 to 311 of 1998
with
CRIMINAL REVISION APPLICATIONS Nos. 314 to 316 of 1998
with
CRIMINAL REVISION APPLICATION No. 299 & 334 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

FULCHANDBHAI AMBARAM PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 537 of 1997

MR PM THAKKAR with MM TIRMIZI for Petitioner
MR PG DESAI PP for Respondent-State

2. Criminal Revision Application No. 175 of 1997
MR BM GUPTA for Petitioner
MR PG DESAI PP for Respondent No. 1
 3. Criminal Revision Application No. 137 & 138 of 1998
MR. PM THAKKAR with MM TIRMIZI for Petitioner
MR. PG DESAI PP for Respondent - State
 4. Cri. Revision Appln Nos. 286 & 287, 299 & 334 of 1998
MR. AD SHAH for Petitioner
MR. PG Desai PP for Respondent-State
 5. Criminal Revision Applications No. 305 to 311 of 1998
MR. KP RAVAL for Petitioner
MR. PG Desai PP for Respondent-State
 6. Criminal Revision Application Nos. 314 to 316 of 1998
MR. KR RAVAL with A.D SHAH for petitioner
MR. S.R Divetia APP for Respondent-State
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CORAM : MISS JUSTICE R.M.DOSHIT
Date of decision: 14/07/98

COMMON JUDGEMENT

Heard learned advocates for the respective applicants, and Mr. P.G Desai, the learned PP for the respondent-State.

2. All these applications raise a common question of law and with the consent of the learned advocates, are disposed of by this common judgment and order.

3. The succinct facts are : The applicants in all these application are public servants who have been charged for commission of offence punishable under Section 7 and 13 (1)(d), read with Section 13 (2) of the Prevention of Corruption Act, 1988 {hereinafter referred to as "the Act"}. I am informed that in neither of the cases, the trial has yet begun. In some of the matters, charge has been framed against the accused applicants while in some of the matters, even the charge is yet to be framed. At this stage, the applicants-accused made application before the trial Court seeking discharge on the ground that the investigation carried out by the concerned police inspectors of the Anti-Corruption Bureau

in respect of the respective offences was illegal and is contrary to the provisions contained in Section 17 of the Act. The reports made by such officers are, therefore, null and void and the Court, therefore, has no jurisdiction to proceed further on the basis of such reports. It was, therefore, prayed that the Court may declare that the cognizance of offence taken by the trial Court on the basis of unauthorized report of the investigating officer is illegal and for consequential reliefs. The said applications were heard and rejected by the learned trial Judge. Feeling aggrieved, the applicants have preferred these revision applications before this Court under Section 397 of the Code of Criminal Procedure.

4. Mr. A.D. Shah has submitted that the investigation in respect of the offences alleged to have been committed under the Act is governed by Section 17 of the Act. Section 17 provides for the persons authorized to investigate in respect of such offences. Clause-(a) thereof relates to the cases of Delhi Special Police Establishment; clause (b) thereof relates to Metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and any other metropolitan area notified as such under sub-section (1) of Section 8 of the Code of Criminal Procedure; and clause (c) thereof relates to the areas other than the metropolitan areas. Section 17 provides that no police officer below the rank stipulated in the respective clause shall investigate any offence punishable under the Act, without the order of a Metropolitan Magistrate or a Magistrate of First Class; as the case may be or make arrest therefore without a warrant. First proviso thereof empowers the State Government to make general or special order to authorize the police officer not below the rank of the Inspector of Police to investigate such offence without the order of the Metropolitan Magistrate or a Magistrate of First Class, as the case may be. Second proviso thereof deals with the offences referred to in clause (e) of sub-section (1) of Section 13. In all these applications, we are concerned with the offence committed within the metropolitan area of the city of Ahmedabad and in respect of offence alleged to have been committed under Sections 7 and Section 13 (1)(d) read with Section 13 (2) of the Act. Clause (b) of Section 17 provides, as aforesaid, that in the metropolitan areas no police officer below the rank of Assistant Commissioner of Police shall investigate any offence punishable under the Act. Mr. Shah has submitted that in all the matters before this Court, the investigation in respect of respective offence has been carried out by the officer of

the rank of Police Inspector, who indisputably is an officer below the rank of Assistant Commissioner of Police, which is expressly barred by clause (b) of Section 17. It is submitted that hence the investigation made by the respective investigating officers is without the authority of law and no proceeding could have been initiated on the basis of such report. He, therefore, has submitted that the concerned applicants deserve to be discharged and the complaint lodged against them, on the basis of such unauthorized investigation reports require to be quashed and set-aside. He has further contended that while contesting the applications made by the respective applicants-accused, the State has relied upon a Notification dated 10th January, 1989 {hereinafter referred to "the Notification"}. It is the defence of the State that under the Notification, the Inspectors of Police attached to the Anti-Corruption Bureau are authorized to investigate the offence punishable under the Act, without the order of a Metropolitan Magistrate and therefore, the investigation made by the respective Inspectors of Police is legal and valid and none of the applicants deserve discharge. Mr. Shah has contended that the Notification is confined to the offence committed in the areas other than the metropolitan areas and does not apply to the offence committed within the metropolitan areas. The Notification, therefore, cannot be pressed into service in the present group of applications.

5. Mr. Thakkar has submitted that the cardinal principle of interpretation of a statute requires that any piece of legislation be given its plain, natural and grammatical meaning. He has further submitted that to cull the intention of the Government in issuing the above notification, it should be necessary to peruse the files of the Government. He has further submitted that the intention of the State Government to authorise the Inspectors of Police attached to the Anti-Corruption Bureau to the areas other than the metropolitan areas is clear. He has submitted that reference to sub-section (c) in the first part of the notification is really a reference to clause (c) and the same discloses the intention of the State Government to apply the said notification to the areas covered by clause (c) of Section 17 of the Act. He has submitted that unless the notification is read in that manner, the inclusion of word "sub-section (c)" in the first part of the notification would be nugatory and in absence of the said words, the whole notification would loose meaning since in that case the notification cannot be applied to any of the areas covered either by clause (a), (b) or (c). He

has submitted that Section 17 has been enacted with a view to providing safeguard against vexatious complaints against public servants. It is nothing but an inbuilt safeguard against such vexatious complaints. Therefore, the notification issued under the first proviso thereof should be read in furtherance of the underlying object for enacting Section 17. He has submitted that it is, therefore, desirable that investigation into such complaints should be made by superior officers and should not be left to the subordinate officers. However, the Government may have to entrust such investigation to the subordinate officers in the areas where adequate number of superior officers may not be available. Since adequate number of Superintendents of Police may not be available for the areas other than the metropolitan areas, the investigation may have to be entrusted to the subordinate officers, however, there is no such requirement for the metropolitan areas for which many Asstt. Commissioners of Police are appointed. In that view of the matter also, the notification cannot be applied to the metropolitan areas covered by clause (b) of Section 17.

6. Mr. Gupta has supported the application and has adopted the contention raised by Mr. A.D Shah and Mr P.M Thakkar.

7. The question, therefore, boils down to the interpretation of the Notification and whether the Notification applies only in case of the offence committed in the area other than the metropolitan areas or whether it also applies in case of the offences committed within the metropolitan areas. The Notification reads as under :-

ORDER

Home Department
2, Sardar Bhavan
2nd Floor, Sachivalaya
Date : 10-1-1989

No. GG/89/5/LRV-3188/3470-H : In exercise of the powers conferred by the first proviso to sub-section (c) of Section 17 of the Prevention of Corruption Act, 1988 (Act No. 49 of 1988), the Government of Gujarat hereby authorizes for the purpose of the said proviso every police officer not below the rank of an Inspector of Police attached to the Anti-Corruption Bureau,

Gujarat State.

By order and in the name of the Governor of
Gujarat.

Sd/-

R. Balakrishnan

Addl. Chief Secy. to the Govtt."

8. Mr. Shah has relied upon the expression "first proviso to sub-section (c) of Section 17 of the Prevention of Corruption Act, 1988 {Act No. 49 of 1988}" used in the Notification and has submitted that the Notification is expressly confined to the cases covered under clause (c) of Section 7 of the Act, and therefore, necessarily, the authorization given to the Inspectors of Police attached to the Anti-Corruption Bureau is restricted to the offence committed within the areas other than the metropolitan areas. The said notification has, therefore, no applicability in the present group of matters and the investigation carried by the respective Inspectors of Police being contrary to clause (b) of Section 17 is null and void.

9. To arrive at the correct meaning, the Notification is required to be split in two parts. First part of the Notification deals with the source of authorization, while the latter part authorizes the Inspectors of Police attached to the Anti-Corruption Bureau to investigate any offence under the Act, without the order of a Metropolitan Magistrate or a Magistrate of First Class, as the case may be. The first part refers to the first proviso to sub-section (c) of Section 17. It is apparent that there is some error in referring to sub-section (c). Since Section 17 is not divided into sub-sections, what is referred to as "sub-section (c) of Section 17" is really clause (c) of Section 17 and the "first proviso to sub-section (c) to Section 17" referred to therein refers to the first proviso to the Section. It is the first proviso which empowers the Government to authorize the Police Officers not below the rank of Inspectors of Police to investigate such offences without the order of a Metropolitan Magistrate or a Magistrate of First Class; as the case may be. Therefore, in my view, reference to "first proviso to Sub-section (c) of Section 17" in the first part of the Notification is intended to identify the source of power derived by the Government to issue such notification and in no manner it can be interpreted to mean that the Notification is confined to the cases covered by clause (c) of Section 17. The

latter part of the Notification reads as, "the Government of Gujarat hereby authorises for the purpose of the said proviso, every Police Officer not below the rank of Inspectors of Police attached to the Anti-Corruption Bureau, Gujarat State." Thus, the authorization conferred under the Notification is not restricted either to the areas covered by clause (b) or to the areas covered by clause (c). It should, therefore, govern all the areas covered under Clause (b) as well as clause (c). The words, "for the purpose of the said proviso" used in the said Notification discloses the intention of the Government to confer such authorization for all the areas governed either by clause (b) or clause (c). Mr. Shah has here argued that if the Notification were split into two parts than the latter part of the Notification which confers authorization upon the Inspectors of Police, as aforesaid, does not refer to any area, and therefore, cannot be applied to areas covered either by clause (b) or clause (c). I am afraid, I cannot accept such an argument. The only possible interpretation, in my view, can be that the said authorization deals with all areas whether governed by clause (b) or clause (c). I am, therefore, of the view that if the investigation has been made by the officer not below the rank of Inspector of police attached to the Anti-Corruption Bureau, the same cannot be said to have been made without the authority of law nor can it be said to be bad, illegal or void, as is argued by the learned advocates for the respective applicants. It is not disputed that in all the matters before this Court, the investigation has been carried out by the Inspectors of Police attached to the Anti-Corruption Bureau.

10. Mr. Shah has contended that while interpreting the above notification, the Court should take assistance of the concerned files of the Government. He has submitted that the real intention of the Government would be disclosed if the files are perused. He has further contended that to the knowledge of the applicants, the Government intended to restrict this authorization to the cases governed by clause (c) alone. I cannot accept this argument. For interpreting the Notification, I need not rely upon the government files and the notings made thereon. The Notification is required to be given its plain and natural meaning and it being clear and unambiguous, no external assistance is required.

11. In view of the above discussion, I hold that the investigation carried out by the Inspectors of Police attached to the Anti-Corruption Bureau in respect of the offence punishable under the Act is in consonance with

the provision contained in Section 17 read with the Government Notification dated 10th January, 1989 and the subsequent proceedings taken on the basis of the report of the Investigating Officer, therefore, requires to be upheld.

12. Applications are, therefore, dismissed. Rule nisi issued on each of the applications is discharged. Interim relief granted in each of the applications is vacated. Parties shall bear their own costs.

Prakash*